APPEAL NO. 032167
FILED SEPTEMBER 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on July 29, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not have disability. The claimant appeals, essentially on sufficiency of the evidence grounds, and attaches numerous documents to his appeal. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Attached to the claimant's appeal are many documents that were admitted into evidence at the hearing, as well as several documents that were not offered into evidence at the hearing. Generally, the Appeals Panel does not consider documents not offered into evidence at the hearing and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the documents attached to the appeal, as the documents were clearly known to the claimant prior to the CCH and could have been presented at the hearing with the exercise of due diligence by the claimant.

The hearing officer did not err in reaching the complained-of injury determination. The issue of whether the claimant sustained a compensable injury involved a question of fact for the hearing officer to resolve. The evidence before the hearing officer was conflicting. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer specifically noted that "[t]he case comes down to credibility, and Claimant was not a credible witness." In view of the evidence presented, we cannot conclude that the hearing officer's determination that the claimant did not sustain a compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **UTICA NATIONAL INSURANCE COMPANY OF TEXAS** and the name and address of its registered agent for service of process is

RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243-9332.

_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Robert W. Potts
Appeals Judge